IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 350 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SWAMI KALUGIRIJI & 2 - Applicant(s)
Versus
PREMIER AUTOMOBILES - Opponent(s)

==========

Appearance :
MR. PRAKASH K. JANI for Applicants.
MR. MEHUL SHARAD SHAH for Opponent.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/07/2005

ORAL JUDGMENT

1. Present is a revision under Section-29(2) of the Bombay Rent Act against the judgement and decree dated 24th June, 1994

passed by the learned 3rd Joint District Judge, Mehsana in Regular Civil Appeal No.69 of 1992, confirming the judgement and decree dated 31st March, 1992 passed in Regular Civil Suit No.6/83 by the learned Civil Judge (J.D.), Visnagar, dismissing the plaintiff's suit.

2. The short facts, necessary for disposal of the present Revision Petition, are that the defendant is a tenant of the plaintiff; the lease is for non-residential purposes. The plaintiff filed the suit submitting, *inter alia*, that the tenant, contrary to the provisions of law, has raised a construction, which even otherwise was not allowed by the landlord and the premises let-out to the defendant are needed *bona fide* by the landlord for the purposes of occupation by the Trust. The tenant contested the suit on all the grounds.

3. After the parties led their evidences, the trial Court, after hearing the parties, recorded the findings that the landlord has failed to prove that any illegal construction has been made by the tenant, rather the finding was that the construction was temporary in nature and was not adversely affecting the rights of the landlord. So far as the *bona fide* need is concerned, the trial Court negatived the same, observing that the landlord is in possession of a vast chunk of open land and even otherwise he has not proved the

availability of funds for raising the construction. The findings are affirmed by the Appellate Court.

4. Learned Counsel for the applicants submits that the findings recorded by the two Courts below are contrary to law because some evidence was available to record a finding in favour of the landlord. It was submitted that the Appellate Court failed in not appreciating that the evidence, available on the record, was proving the *bona fides* of the requirement and there was still evidence available on the record that the landlord was possessed of necessary funds.

The opponent-tenant has opposed the aforesaid application.

5. The two Courts have recorded a finding of fact that the construction is of temporary nature and is not adversely affecting the rights of the landlord. If such is the finding, then, the action on the part of the tenant would not be an action which would disentitle him of the protection under the Rent Act.

6. So far as the finding relating to the *bona fide* requirement is concerned, when the two Courts have found and the findings are based on appreciation of evidence that the landlord does not need the premises, then, it would not

be possible for this Court to exercise its revisional jurisdiction to interfere in the matter, especially, when no perversity in the findings is pointed out.

7. I find no reason to interfere. The Revision is dismissed. Rule is discharged.

[***R.S.Garg, J.***]

*kamlesh**